

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8066 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PATNI RAMESHBHAI RAIBHANBHAI

Versus

STATE OF GUJARAT

Appearance:

MRS MADHUBEN SHARMA for Petitioner
MR PREMAL R JOSHI, AGP, for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/09/2000

ORAL JUDGEMENT

1. Ms. Madhuben Sharma prays for deletion of name of respondent No.4. This prayer is not opposed by the counsel for the respondents. Order accordingly. The name of respondent No.4 is deleted from the title of the special civil application. Office is directed to make

necessary correction in the cause title of the special civil application.

2. Learned counsel for the petitioner contended that this matter is squarely covered by the decision of this Court in the special civil application No.7556 of 1996 decided on 6-8-1999 (Coram: Mr. Justice S.K. Keshote).

3. Learned counsel for the respondents submits that this matter is not covered by the said decision. There the petitioners were on the select list whereas here the petitioner's name is there in the waiting list. Waiting list candidate has no right of appointment.

4. Ms. Sharma, learned counsel for the petitioner in rejoinder submitted that under the communication of the respondents dated 22nd June, 1998, the ground given for not giving appointment to the petitioner is that ban has been put on appointments by the Government. In her submission, the respondents have no right to defend the writ petition on the ground other than the ground given for declining relief to the petitioner.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. I find sufficient merits in the contention of the learned counsel for the petitioner that it is not open to the respondents to defend the writ petition on a ground which was not the ground given for declining relief to the petitioner. In this case, I find from document annexure 'G' that the decision not to give regular appointment to the petitioner is on the ground that ban was put by the Government on appointments. In reply to the special civil application now somersault has been taken and they have come up with the case that the petitioner's name was on the waiting list and as such he has no right to get the appointment. Learned counsel for the respondents submitted that by mistake it has been mentioned that the appointment was not given to the petitioner due to ban put by the Government on appointments. This is not the defence given by the respondents in reply. I am satisfied that this matter is squarely covered by the decision of this Court given in special civil application No.7556/96 (supra).

7. As a result of the aforesaid discussion, this matter deserves acceptance and accordingly the same is allowed and the respondents are directed to consider the case of the petitioner for giving him regular appointment in the pay scale of Class-IV post from the date of filing

of the special civil application. This exercise has to be undertaken and completed within a period of four weeks from the date of receipt of writ of this order. Rule is made absolute accordingly with no order as to costs.

zgs/-